

JUDGE ENGELMAYER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

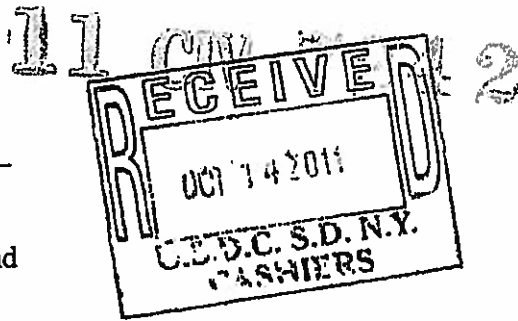
CUSTOM ANESTHESIA SERVICES, P.C.,
INNOVATIVE ANESTHESIA SOLUTION, P.C. and
RICKY ZEGELSTEIN, M.D.,

Plaintiffs,

v.

THE GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA,

Defendant.



-CV-

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that, pursuant to 28 U.S.C. §1441, defendant, The Guardian Life Insurance Company of America ("Guardian"), hereby removes this action to the United States District Court for the Southern District of New York upon the following grounds:

1. Guardian is named as defendant in a civil action brought in the Civil Court of the City of New York, County of New York, entitled "Custom Anesthesia Services, P.C., Innovative Anesthesia Solution, P.C. and Ricky Zegelstein, M.D., Plaintiffs v. The Guardian Life Insurance Company of America, Defendant." The action was commenced by the filing of a summons and complaint in such court on September 8, 2011; a copy of the summons and complaint is attached hereto as Exhibit A.

2. The summons and complaint was received by Guardian on September 15, 2011. Hence, this notice of removal is timely filed.

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3. This Court has original jurisdiction over the above-captioned action pursuant to the provisions of 28 U.S.C. §1331, and this action is one that may be removed to this Court pursuant to 28 U.S.C. §1441, on the ground that this is an action to recover benefits claimed to be due and owing under one or more medical insurance policies that are part of employee welfare benefit plans established and/or maintained by the employers of the individuals to whom plaintiffs provided the medical services at issue, and which therefore are governed by the Employee Retirement Income Security Act of 1974, 29 U.S.C. §1001 *et seq.* ("ERISA"). Under well-established law, ERISA has entirely preempted this area of law, and plaintiffs' claim for such benefits therefore arises under federal law. *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987).

4. The undersigned certifies that this notice of removal, including the attachments thereto, has been served by mail on plaintiffs' counsel on October 14, 2011.

WHEREFORE, Guardian hereby removes this action to this Court.

DATED: October 14, 2011

PHILLIPS LYTTLE LLP

By: 

Paul K. Stecker

Suite 3400, One HSBC Center
Buffalo, New York 14203
(716) 847-8400
pstecker@phillipslytle.com

and

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Anna R. Mercado
Phillips Lytle LLP
437 Madison Avenue, 34th Floor
New York, New York 10022
(212) 759-4888
amercado@phillipslytle.com

Attorneys for Defendant

TO: SANTUCCI & ASSOCIATES
(Robert A. Santucci, of Counsel)
Attorneys for Plaintiffs
110 Wall Streets, 11th Floor
New York, New York 10005-3817

FFFtl
Doc # 01-2522885.1

Exhibit A

CIVIL COURT OF THE CITY OF NEW YORK

COUNTY OF NEW YORK

CUSTOM ANESTHESIA SERVICES, P.C.,

INNOVATIVE ANESTHESIA SOLUTION, P.C., and

RICKY ZEGELSTEIN, M.D.

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SUMMONS

plaintiffs,

-against-

THE GUARDIAN LIFE INSURANCE
COMPANY OF AMERICA

defendant.

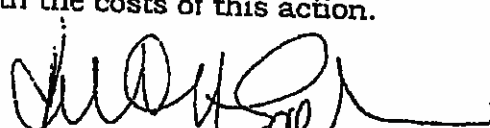
Plaintiff's Address

65A Beverly Road
Great Neck, New York 11021
Defendant's place of business
and transaction arose in the
County of New York

To the above named defendant

You are hereby summoned to appear in the Civil Court of the City of New York, County of New York at the office of the said Court at 111 Centre Street, in the County of New York, City and State of New York, within the time provided by law as noted below and to file your answer to the -endorsed summons- with the Clerk: upon your failure to answer judgment will be taken against you for the sum of \$ 46,650.00 or the maximum jurisdictional amount with interest thereon from the 17th day of December, 2008 together with the costs of this action.

Dated: August 31, 2011



Robert A. Santucci

Attorneys for Plaintiffs:

SANTUCCI & ASSOCIATES

Defendant's Address:

The Guardian

7 Hanover Square - H-26-E 110 Wall Streets - 11th Floor

New York, New York 10004

(212) 598-8000

New York, New York 10005-3817

(212) 709-8357

Note. The law provides that: (a) If this summons is served by its delivery to you personally within the City of New York, you must appear and answer within TWENTY days after such service; or (b) If this summons is served by delivery to any other than you personally, or is served outside the City of New York, or by publication, or by any means other than personal delivery to you within the City of New York, you are allowed THIRTY days after proof of service thereof is filed with the Clerk of this Court within which to appear and answer. If the cause of action is for money only and a formal complaint is not attached to the summons, strike the words "annexed complaint." If a formal complaint is attached to the summons, strike the words "endorsed summons"

FILED

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NEW YORK COUNTY
CIVIL COURT

ENDORSED COMPLAINT

A statement of the nature and substance of the plaintiffs' cause of action is follows:

Jurisdiction and Venue: Plaintiff Ricky Zegelstein, M.D. is a medical doctor with a place of business in the County of Nassau, State of New York. Plaintiffs Custom Anesthesia, P.C. and Innovative Anesthesia Solution, P.C. are domestic professional corporations with a place of business in the County of Nassau, State of New York. Upon information and belief, defendant is a domestic corporation with a place of business at 7 Hanover Square – H-26-E, New York, New York 10004 and who transacts business within the City and State of New York. This transaction arose in the County, City, and State of New York.

First Cause of Action: This is an action for breach of contract. Heretofore defendant or its agents or assigns or business partners issued or caused to be issued medical insurance coverage to individuals. That on or about or between December 1, 2004 and December 17, 2008 plaintiffs provided medical services to individuals issued said medical insurance coverage and submitted medical claims to the defendant in the amount of \$ 46,650.00 which the defendant arbitrarily and capriciously refused to pay. Plaintiffs have exhausted all administrative remedies.

Attorneys for Plaintiff:

SANTUCCI & ASSOCIATES

110 Wall Street - 11th Floor

New York, New York 10005-3111

(212) 709-8357